141-212

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1061~~ ~~708~~ 410 114

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM M. GRIFFITH.

APPEAL FROM THE COURT OF CLAIMS.

Office Supreme Court U. S.
FILED.
SEP 24 1887
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

No. ———.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM M. GRIFFITH.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
I. Petition, filed March 5, 1885	1	1
II. Traverse, filed March 11, 1885	5	2
III. Counter-claim, filed March 11, 1885	6	3
IV. Replication to counter-claim, filed April 4, 1885	7	3
V. Amended counter-claim, filed December 3, 1886	8	3
VI. Motion to strike out part of counter-claim, filed December 18, 1886.	12	5
VII. Demurrer to counter-claim, filed by claimant December 18, 1886...	13	5
VIII. Claimant's reply to counter-claim, filed February 9, 1887	14	6
IX. Amended counter-claim, filed by leave of court February 9, 1887..	20	9
X. Findings of fact and conclusion of law	24	10
XI. Opinion of the court	34	25
XII. Final judgment	44	34
XIII. Defendant's application for, and allowance of, appeal	45	34
XIV. Certificate	46	35

1 I.

In the U. S. Court of Claims, December term, 1884.—Filed Mch. 5, 1885.—J. R.

WILLIAM M. GRIFFITH, CLAIMANT,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT. } No. 14484.

To the hon. judges of the United States Court of Claims:

Your petitioner respectfully represents for his cause of action, that prior to Nov. 27th, 1878, he was a contractor with the defendant, and was carrying the United States mails over route 40116, from Phœnix to Prescott, in the Territory of Arizona, for one time a week. That on the said 27th day of Nov., 1878, then being engaged in carrying said mails over said route under a contract theretofore legally made with defendant, on a schedule of ninety-six hours, at a compensation of $680 per annum, he made to the defendant, through the Post-Office Department of the Government, the following proposition, to wit:

WASHINGTON, D. C., *Nov.* 27, 1878.

Hon. SECOND ASSISTANT P. M. GEN'L:

SIR: I propose to perform tri-weekly service upon route 40116,
2 Phœnix to Prescott, upon an expedited schedule of one-half the running time as advertised for the total amount pay of eighty-eight hundred and fifty dollars, this route being the shortest and most direct route to the capital of Arizona. It will in time be the route upon which the entire mail will have to be transported, therefore the price above named for the service is a low price.

(Signed claimant:) W. M. GRIFFITH,
Contractor.

Which said proposition was, on the 2nd day of December, 1878, accepted by the defendant in the following language, to wit:

"Increase service two trips a week, and reduce schedule time from ninety-six to forty-eight hours, from December 16th, 1878, and allow contractor $8,170 per annum additional pay, being less than pro rata, but in accordance with his written agreement."

Your petitioner states that after said acceptance of said proposition he carried the mails over said route under the contract thus entered into, up to the 11th day of June, 1879, and in all things complied with said contract on his part, and was paid therefor in full by the defendant; that on the 11th day of June, 1879, the defendant then and there, by order of the Post-Office Department, No. 5270, changed said contract in the following words and figures; that is to say:

"First, increase the service four trips per week, and allow contractor $11,800 per annum additional pay, being pro rata from June 16th 1879.

"Second, reduce running time from forty-eight hours to thirty-two hours, and allow contractor $11,990 per annum additional pay, being pro rata from June 16th, 1879."

3 Your petitioner alleges that he accepted the terms and conditions of said order, and the contract changed thereby, and continued to

carry the mails over said route in accordance with the terms thereof up to the 30th day of June, 1882; that said service under said last named order was performed by your petitioner to the satisfaction of said defendant and was accepted by the defendant, and your petitioner was paid therefor under the said contract, as modified and changed by said order, in full up to the 30th day of September, 1881, and your petitioner has fully complied with said contract on his part.

Your petitioner alleges that there is due to him on said contract and unpaid by the defendant, the sum of $24,480.24, which said sum is composed of the last three quarterly instalments, beginning the first of October, 1881, and ending the 30th of June, 1882, amounting to $8,160.08 each; that said sum of $24,4480.2 has been demanded of the defendant by your petitioner and payment thereof has been refused by defendant.

Your petitioner therefore demands judgment against the defendant for the sum of $24,480.24, and for his costs of suit in this behalf expended.

EPPA HUNTON,
JEFF. CHANDLER,
Attorneys for Petitioner.

United States of America, eastern district of Missouri.

CITY OF ST. LOUIS,
State of Missouri, ss:

William M. Griffith personally appeared before me, and made oath according to law that no assignment or transfer of said claim or any interest therein has been made, and that he believes he is justly entitled
4 to the amount therein claimed from the defendant, after allowing all just credits and offsets, and that he believes the facts as stated in said petition to be true.

WM. M. GRIFFITH.

Subscribed and sworn to before me this 29th day of January, 1885.

A. P. SELBY,
Clerk U. S. Circuit Court, East. Dist. Mo.,
By T. L. CRAWFORD, *Deputy.*

5 II.—*General traverse.*—*Filed Mar.* 11, 1885.

And now comes the Attorney-General on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

6 III.—*Counter-claim.*—*Filed Mar.* 11, 1885.

COUNTER-CLAIM.

Now comes the Attorney-General, on behalf of the United States, and for a further plea, says:

That at and before the institution of this suit, to wit, on the 30th day of September, 1881, the said claimant was indebted to the defendants in the full and just sum of $65,577.53, for so much money by the said claimant had and received to and for the use of said defendants, which said sum of money the said defendants aver was then due and payable; yet the said claimant, although often requested so to do, has not paid said sum of money, nor any part thereof.

Wherefore the defendants pray judgment against the said claimant, on this their counter-claim, for the sum of $65,577.53 aforesaid, with interest thereon at the rate of 6 per cent. per annum from the 30th day of September, 1881.

THOMAS SIMONS,
Assistant Attorney-General.

7 IV.—*Replication to counter-claim.*—*Filed April* 4, 1885.

Now comes the plaintiff herein, William M. Griffith, and, for replication to counter-claim filed in this case by the defendant, says that it is not true that he is indebted to defendant in the sum of $65,577.53 or any other sum whatsoever, or that he is indebted to the defendant at all, but avers that the contrary is true, that the defendant is indebted to him as stated in his petition in this case, and the said William M. Griffith denies each and every allegation in said counter-claim. And having fully replied he prays judgment according to the prayer of his petition.

HUNTON & CHANDLER,
Attys. for said Griffith.

William M. Griffith, being duly sworn, says that the reply here by him made is true.

WM. M. GRIFFITH.

Subscribed and sworn to before me this 24 day of March, 1885.

[SEAL.] J. ANDERSON, JR.,
Dep. Clerk.

8 V.—*Amended counter-claim.*—*Filed Dec.* 3, 1886.

AMENDED COUNTER-CLAIM.

Now comes the Attorney-General, on behalf of the United States, and for a further plea says:

I.

That at and before the institution of this suit, to wit, on the 30th day of September, 1881, the claimant was indebted to the defendant in the full and just sum of sixty-five thousand five hundred and seventy-seven dollars and fifty-three cents ($65,577.53) for so much money by the said

claimant had and received to and for the use of said defendant, which said sum of money the said defendant avers was then due and payable, yet said claimant, although often requested so to do, has not paid said sum of money nor any part thereof.

II.

That by a certain contract in writing, dated July 31, 1878, the claimant agreed with the defendant for and in consideration of the sum of
9 six hundred and eighty dollars per annum to carry the mail upon a certain schedule therein prescribed once a week each way upon the route between Phœnix and Prescott, in the Territory of Arizona, known as route No. 40116, and that said contract contained other and divers stipulations, covenants, and agreements not necessary to be herein specifically referred to; that on or about December 2, 1878, the Postmaster-General made an order increasing and expediting the service on said route and making additional allowances therefor as follows:

"Increase service two trips a week and reduce schedule time from ninety-six to forty-eight hours from December 16, 1878, and allow contractor $8,150 per annum additional pay, being less than pro rata, but in accordance with his written agreement."

That thereafter certain further orders set out in claimant's petition were also made by the Postmaster-General whereby the claimant's pay was increased to the sum of $32,640.32 per annum, and thereafter certain other and further orders were also made affecting the service upon said route, but the same are not necessary to be herein specifically referred to.

Defendant avers that, by the terms and provisions of the said order of December 2, 1878, an extra allowance of compensation was made to the claimant for expedition or increase of speed on said route equal to three hundred and thirty-three per cent. of the original contract pay, in addition to a pro rata allowance for two additional trip per week.

Defendant avers that said order of December 2, 1878, was wholly
10 illegal and invalid in so far as any allowance was made therein for increase of speed upon said route from 96 hours to 48 hours, because the said increase of speed did not make necessary the employment of additional stock and carriers equal to an increase of three hundred and thirty-three per cent. of the number necessarily required to perform the original contract service; and that no additional stock and carriers were rendered necessary upon said route by reason of said increase of speed.

Defendant further avers that the said order of December 2, 1878, was made by the Postmaster-General in mistake of fact, and that the said allowance for increase of speed was made, and the amount thereof from time to time paid, in violation of the provisions of section 3961 of the Revised Statutes of the United States.

Defendant avers that, by reason of a certain statement made and sworn to by the claimant on the tenth day of September, 1878, and presented by or on his behalf to the Second Assistant Postmaster-General, the Postmaster-General was led to believe that, if an increase of speed upon said route from Phœnix to Prescott from 96 hours to 48 hours was ordered, an increase of stock and carriers would thereby be rendered necessary equivalent to four hundred and fifty per cent., and that in making the allowance aforesaid for increase of speed, he was acting within the limitations im-

posed by section 3961 aforesaid. Whereas in truth and in fact the said allowance for increase of speed was wholly or largely in excess of said limitations.

Defendant further avers that all orders made by the Postmaster-
11 General, granting or curtailing allowances to said claimant upon said route, subsequent to the said order of December 2, 1878, were made upon the basis of pay fixed by the said order, and that the error of the Postmaster-General aforesaid and the violation of law aforesaid in the making of said order of December 2, 1878, were perpetuated and reproduced in all subsequent allowances and payments to and settlements with the claimant for service upon the said route; and that by reason of the premises aforesaid there has been illegally, unjustly, and in mistake of fact, paid to and received by the claimant from the Treasury of the United States the sum of sixty-five thousand and five hundred and seventy-seven dollars and fifty-three cents.

Wherefore the defendant prays judgment against the said claimant for the sum of sixty-five thousand five hundred and seventy-seven dollars and fifty-three cents ($65,577.53) with interest thereon at the rate of 6 per cent. per annum from the 30th day of September, 1881.

ROBERT A. HOWARD,
Assistant Attorney-General.

12 VI.—*Motion to strike out part of defendants' counter-claim.—Filed Dec.* 18, 1886.

Comes now the said claimant, by Hunton & Chandler, his attorneys and moves the court to strike out the first paragraph of defendants' plea of counter-claim, or to require the same to be made more specific by bill of particulars or otherwise; and for grounds of this motion says that the same is insufficient to inform the claimant what moneys were received as alleged, or on what account, or when said moneys were received, to enable claimant to defend against the same.

HUNTON & CHANDLER,
Att'ys for Claimant.

13 VII.—*Demurrer to counter-claim.—Filed Dec.* 18, 1886.

And now comes the claimant, by Hunton & Chandler, his attorneys and demurs to the second paragraph of the said defendants' plea of counter-claim, and for grounds of demurrer says:

1st. That the same is insufficient in law, in that it does not state facts sufficient to constitute a defense to said petition, or any part thereof, nor to constitute a valid claim against the claimant.

2d. Because this court has no power or jurisdiction to inquire into and determine or adjudicate as to the matters and things set up in said paragraph, but jurisdiction in that behalf rests by law solely and exclusively in the Postmaster-General.

HUNTON & CHANDLER,
Att'ys for Claimant.

14 VIII.—*Reply to counter-claim.*—*Filed February* 9, 1887.

Now at this date comes the claimant herein, and for answer and defense to defendants' counter-claim denies each and every allegation of said first plea of said counter-claim, and herein and hereby puts each fact thereof in issue by denying the same; says that he is not indebted to the United States as therein charged, and did not receive for or on account of the nited States any money whatever at any time; and for further answer to said counter-claim and the second plea or part thereof, denies that the order set forth in the counter-claim dated September 2, 1878, was whole or in any part or degree illegal or invalid.

So far as it was made for increase of speed upon said route, or is, or any part of it is, invalid, for any reason, denies that the increase of speed provided for in said order did not make it necessary to employ additional stock and carriers equal to the increase of pay made therefor; but avers that said increase of pay under said order was in all respects made in conformity with the law, and in accordance therewith, and within the authority vested by law in the Postmaster-General to make such increase, and that additional stock and carriers were necessary to the full number justifying said order and the increase of pay allowed claimant under said order; denies that said order was made by the Postmaster-General in mistake of fact, or that the said allowance for increase of speed was made in mistake of fact, or that the amount paid under said order from time to time was in violation of the provisions of section 3961 of the Revised Statutes of the United States; but avers that the payments were in accordance with said section and the laws of the United States and the evidence and facts in the case, and the said Postmaster-General, in making said increase of pay, and in allowing and ordering the payment thereof, acted in strict conformity to law.

15 Claimant denies that a certain statement made and sworn to by the complainant on the 10th day of September, 1878, was presented to the Postmaster-General by him or in his behalf or to influence the increase of pay under his said contract; denies that the Postmaster-General was led to believe from said statement that if an increase of speed upon said route from Phœnix to Prescott from 96 to 48 hours was ordered an increase of stock and carriers would thereby be rendered necessary, equivalent to 450 per cent., or that the Postmaster-General, in making said inquiries, acted upon said statement at all; denies that said Postmaster-General considered such statement in increasing the pay under said contract as complained of, and denies that the allowance for increase of speed was wholly or largely, or in any degree whatever, in excess of the limitations of law, but avers that the Postmaster-General made such increase for reasons satisfactory to said Postmaster-General other than the statement hereinabove mentioned, and in said counter-claim described, upon full information and evidence of what was necessary and proper to be done in the premises, furnished him by others acting in concert with him, in administering the affairs of the Post-Office Department in this particular, and avers that claimant was invited by the Postmaster-General to make a written proposition to the said Postmaster-General, stating upon what terms he would carry the mail on said route at the increased speed provided for in said order, and thereupon in response to said invitation

claimant did make a written proposition to said Postmaster-General setting forth the terms and price at and for which claimant would transport the mail over said route within the terms of the order, dated December 2, 1878, thereafter to be made, if said proposition was accepted; that the Postmaster-General, on behalf of the Government of the United
16 States, did accept said proposition after full inquiry made, not of claimant, but of the officers and agents of the Post-Office Department, and after securing such information and evidence as justified the making of said order, and that said order is true wherein it says that the allowance made under it, being less than pro rata, but in accordance with his (claimant's) written agreement; denies that there was any error in the making of said order, or any mistake of fact or law in the making of the same by the Postmaster-General, and denies that any violation of law as set up in said counter-claim was perpetuated and reproduced in any subsequence allowances and payments to or settlements with claimant for service upon said route, and denies that by reason of the premises there has been illegally, unjustly, or by any mistake of fact, paid to or received by the claimant from the Treasurer of the United States the sum of $65,577.53, or any sum whatsoever; but avers that every dollar received by claimant and paid to him by the said United States under said contract, and increase of service ordered December 2, 1882, and for increase of speed under said order was correctly, legally, honestly paid to said claimant and received by him.

Claimant further answering said counter-claim, and for a further and separate defense thereto, avers that claimant actually used and employed in the execution of his contract with the Government, and for the purpose of transporting the mails with increased speed and frequency in the orders complained of, all the stock and carriers contemplated by said order, and by the alleged statement of claimant described in said counter-claim, and that the said number of stock and carriers were necessary to be used in the transportation of the mails with the frequency and speed which he was required to transport the same under the orders of the Posmaster-Gen-
17 eral, and especially under the order complained of in said counter-claim.

The defendant sent agents over said route after said order was made, made, and while the number of stock and carriers used by claimant in the execution of said contract and said order was actually being used by him, and said agents made special inquiry into the number of stock and carriers so used to carry said mails under said contract and order, and what number was necessary to be used in so executing said contract and said order, and had full notice for more than three years prior to the termination of said contract term of number of stock and carriers so used by claimant, and necessary to be used by claimant, and the defendant then and thereby was fully informed of the number necessary and of the number so used as aforesaid, and accepted the same as a correct estimate of the number of stock and carriers necessary to carry said mail under said increased rate of speed, and never found any fault with said estimate; but, on the contrary, continued to pay claimant in accordance therewith from time to time as the same came due, with full knowledge of all the facts in the case, and the full knowledge of the necessities for the use of the stock and carriers so employed and used by claimant, and then and there and

thereby approved, affirmed, and ratified the findings of the Postmaster-General of the number of stock and carriers necessary, and that the number used by claimant and claimed to be necessary by him as was in fact necessary.

Wherefore claimant says that it is unjust now, after receiving the service of claimant under said contract and said order for the transportation of the mail with such increased speed as ordered by the Postmaster-General, to set up and assert the claim against claimant made and set forth in the said counter-claim.

18 And for further answer and defense to defendant's counter-claim, claimant avers and says that after said order of December 2, 1872, was made, as set forth in said counter-claim, to transport the mails over said route in accordance therewith, the Congress of the United States entered upon an investigation of the reasons why the service, including the mail service on this route, had been increased, and while orders for increase of speed on this and other routes had been made by the Postmaster-General, including the reasons why the order complained of was made, and the defendant, by reason of such investigation in addition to the knowledge and information which came to defendant through its mail agents and otherwise and inspectors, which was ample and complete to inform defendant of the facts and true condition of the service on said route, was fully informed of and knew how many stock and carriers were necessary and were deemed to be necessary to execute said contract of claimant to transport the mail over said route under said order complained of, and having such knowledge, and the additional knowledge which came to defendant from a special investigation in regard to the number of stock and carriers necessary to be used in carrying the mail over said route under said order, continued the mail service as provided for in said contract and said orders so complained of, and received the full benefit of the service to the Government and to the people resulting from the expedition on said route and increase of speed complained of and exacted of claimant a full and complete compliance with his contract and with the terms of said orders complained of in said counter claim by means of the use of the stock and carriers, and all of them, contemplated by said order; wherefore claimant says that the defendant has, under the circumstances aforesaid, with full knowledge of its rights in the premises, required of

19 claimant the execution of his contract as modified and changed by said order of said Postmaster-General complained of as aforesaid, and paid all of the money which has been paid to defendant under said contract and increase of speed with full knowledge of all the facts aforesaid, and cannot now be heard to object to said increase of speed and the allowance made and paid therefor in said counter-claim complained, and it was reasonably worth to carry said mail under said contract and said order all that the Government defendant paid therefor. Wherefore claimant prays judgment as in his declaration.

HUNTON & CHANDLER,
Att'ys for Claimant.
WILLIAM M. GRIFFITH.

Subscribed and sworn to before me this 3d day of February, 1887.
[SEAL.] WM. E. GUILD,
Court Commissioner in and for Pinal County, Arizona.

IX.—*Amended counter-claim.—Filed, by leave of court, Feb'y 9, 1887.*

AMENDED COUNTER-CLAIM.

Now comes the Attorney-General, on behalf of the United States, and for a further plea says:

I.

That at and before the institution of this suit, to wit, on the 30th day of September, 1881, the claimant was indebted to the defendant in the full and just sum of sixty-five thousand five hundred and seventy-seven dollars and fifty-three cents ($65,577.53) for so much money by the said claimant had and received to and for the use of said defendant, which said sum of money the said defendant avers was then due and payable, yet said claimant, although often requested so to do, has not paid said sum of money nor any part thereof.

II.

That by a certain contract in writing dated July 31, 1878, the claimant agreed with the defendant, for and in consideration of the sum of six
21 hundred and eighty dollars per annum, to carry the mail upon a certain schedule therein prescribed once a week each way upon the route between Phœnix and Prescott, in the Territory of Arizona, known as Route No. 40116, and that said contract contained other and divers stipulations, covenants, and agreements not necessary to be herein specifically referred to; that on or about December 2, 1878, the Postmaster-General made an order increasing and expediting the service on said route and making additional allowances therefor as follows:

"Increase service two trips a week, and reduce schedule time from ninety-six to forty-eight hours from December 16, 1878, and allow contractor $8,150 per annum additional pay, being less than pro rata, but in accordance with his written agreement."

That thereafter certain further orders, set out in claimant's petition, were also made by the Postmaster-General, whereby the claimant's pay was increased to the sum of $32,640.32 per annum, and thereafter certain other and further orders were also made affecting the service upon said route, but the same are not necessary to be herein specifically referred to.

Defendant avers that, by the terms and provisions of the said order of December 2, 1878, an extra allowance of compensation was made to the claimant for expedition or increase of speed on said route equal to three hundred and thirty-three per cent. of the original contract pay, in addition to a pro rata allowance for two additional trips per week.

Defendant avers that said order of December 2, 1878, was wholly
22 illegal and invalid in so far as any allowance was made therein for increase of speed upon said route from 96 hours to 48 hours, because the said increase of speed did not make necessary the employment of additional stock and carriers equal to an increase of three hundred and thirty-three per cent. of the number necessarily required to perform the

original contract service, and that no additional stock and carriers were rendered necessary upon said route by reason of said increase of speed.

Defendant further avers that the said order of December 2, 1878, was made by the Postmaster-General in mistake of fact, and that the said allowance for increase of speed was made, and the amount thereof from time to time paid, in violation of the provisions of section 3961 of the Revised Statutes of the United States.

Defendant avers that, by reason of a certain statement made and sworn to by the claimant on the tenth day of September, 1878, and presented by or on his behalf to the Second Assistant Postmaster-General, the Postmaster-General was led to believe that, if an increase of speed upon said route from Phœnix to Prescott from 96 hours to 48 hours was ordered, an increase of stock and carriers would thereby be rendered necessary equivalent to four hundred and fifty per cent., and that in making the allowance aforesaid for increase of speed he was acting within the limitations imposed by section 3961 aforesaid. Whereas in truth and in fact the said allowance for increase of speed was wholly or largely in excess of said limitations.

Defendant further avers that all orders made by the Postmaster-
23 General, granting or curtailing allowances to said claimant upon said route, subsequent to the said order of December 2, 1878, were made upon the basis of pay fixed by the said order, and that the error of the Postmaster-General aforesaid and the violation of law aforesaid in the making of said order of December 2, 1878, were perpetuated and reproduced in all subsequent allowances and payments to and settlements with the claimant for service upon the said route; and that by reason of the premises aforesaid there has been illegally, unjustly, and in mistake of fact, paid to and received by the claimant from the Treasury of the United States the sum of sixty-five thousand and five hundred and seventy-seven dollars and fifty-three cents.

Wherefore the defendant prays judgment against the said claimant for the sum of sixty-five thousand five hundred and seventy-seven dollars and fifty-three cents ($65,577.53) with interest thereon at the rate of 6 per cent. per annum from the 30th day of September, 1881.

ROBERT A. HOWARD,
Assistant Attorney-General.

24 X.—*Findings of fact and conclusion of law.*

FINDINGS OF FACT.

This case having been heard by the Court of Claims, the court upon the evidence find the facts to be as follows:

I.

May 10, 1878, the Postmaster-General issued the following advertisement, with accompanying instructions:

"POST-OFFICE DEPARTMENT,
"*Washington, May* 10, 1878.

"Proposals will be received at the contract office of this Department until 3 p. m. of July 20, 1878, for conveying the mails of the United

States on the routes and by the schedules of departures and arrivals herein specified in the States of ———,

"And in the Territories of Indian, Dakota, Montana, Wyoming, New Mexico, Arizona, Utah, Idaho, and Washington, from October 1, 1878, to June 30, 1882.

"Decisions announced on or before July 31, 1878. Contracts to be returned to the Department duly executed on or before September 10, 1878.

"[Bidders should examine carefully the forms and instructions annexed. See instruction requiring certified check or draft with certain bids, and bond with all bids.]

"ARIZONA.

"Service from October 1, 1878, to June 30, 1882.

"40116 From Phœnix, by Gillett (n. o.) and Agua Fria, to Prescott, 140 miles and back, once a week.

"Leave Phœnix Wednesday at 6 a. m.;

"Arrive at Prescott in 96 hours;

"Leave Prescott Wednesday at 6 a. m.;

"Arrive at Phœnix in 96 hours.

"Bond required with bid, $2,800.

"INSTRUCTIONS TO BIDDERS AND POSTMASTERS.

"[Containing also conditions to be incorporated in the contracts to the extent the Department may deem proper.]

"The Postmaster-General warns bidders and their sureties to acquaint themselves fully with the laws of Congress relating to contracts for the carrying of the mails (the important provisions of which are cited herein), and also to familiarize themselves with the instructions and forms herein furnished, before they shall assume any liabilities as such bidders or sureties, and to prevent misapprehension or cause of complaint thereafter.

"Postmasters are required to make themselves familiar with the laws and these instructions, that they may be able to in formand direct others.

"1. Seven minutes are allowed to each intermediate office, when not otherwise specified, for assorting the mails.

"2. On the routes where the mode of conveyance admits of it, the special agents of the Post-Office Department, also post-office blanks, mail bags, locks, and keys are to be conveyed without extra charge.

"3. 'Way bills' or receipts, prepared by postmasters or other agents of the Department, will accompany the mails, specifying the number and destination of the several bags, to be examined by the postmasters, to insure regularity in the delivery of bags and pouches.

"4. No pay will be made for trips not performed; and for each of such omissions, if the failure be occasioned by the fault of the contractor or carrier, three times the pay of the trip will be deducted. For arrivals so far behind time as to break connection with depending mails and not sufficiently excused, one-fourth of the compensation for the trip is subject to forfeiture. For repeated delinquencies of the kind herein

specified, enlarged penalties, proportioned to the nature thereof and the importance of the mail, may be made.

"5. For leaving behind or throwing off the mails, or any portion of them, for the admission of passengers, or for being concerned in setting up or running an express conveying intelligence in advance of the mail, a quarter's pay may be deducted.

"6. Fines will be imposed unless the delinquency be promptly and satisfactorily explained by certificates of postmasters or the affidavits of other credible persons, for failing to arrive in contract time; for neglecting to take the mail from, or deliver it into, a post-office; for suffering it to be wet, injured, destroyed, robbed, or lost; and for refusing, after demand, to convey the mail as frequently as the contractor runs, or is concerned in running, a coach, car, or steamboat on a route.

"7. The Postmaster-General may annul the contract for repeated failures to run agreeably to contract; for assigning the contract; for violating the post-office laws, or disobeying the instructions of the Department; for refusing to discharge a carrier when required by the Department to do so; for running an express as aforesaid; or for transporting persons or packages conveying mailable matter out of the mail.

"8. The Postmaster-General may order an increase of service on a route by allowing therefor a pro rata increase on the contract pay. He may change schedules of departures and arrivals in all cases, and particularly to make them conform to connections with railroads, without increase of pay, provided the running time be not abridged. The Postmaster-General may also discontinue or curtail the service, in whole or in part, in order to place on the route superior service, or whenever the public interests, in his judgment, shall require such discontinuance or curtailment for any other cause; he allowing, as full indemnity to contractor, one month's extra pay on the amount of service dispensed with, and a pro rata compensation for the amount of service retained and continued.

"9. Payments will be made by collections from, or drafts on, postmasters or otherwise, after the expiration of each quarter—say in November, February, May, and August, provided that required evidence of service has been received.

"10. The distances given are believed to be substantially correct; but no increased pay will be allowed should they be greater than advertised, if the points to be supplied are correctly stated. Bidders must inform themselves on this point, and also in reference to the weight of the mail, the condition of hills, roads, streams, &c., and all toll-bridges, turnpikes, plank-roads, ferries, or obstructions of any kind by which expense may be incurred. No claim for additional pay based on such ground can be considered, nor for alleged mistakes or misapprehension as to the degree of service; nor for bridges destroyed, ferries discontinued, or other obstructions causing or increasing distance or expense occurring during the contract term. Offices established after this advertisement is issued, and also during the contract term, are to be visited without extra pay if the distance be not increased.

"11. Bidders are cautioned to mail their proposals in time to reach the Department by the day and hour named in the advertisement, as bids received after that time will not be considered in competition with bids of reasonable amount received in time. Neither can bids be considered

which are without the bond, oath, and certificate required by section 245, act of June 23, 1874, and section 246, act of August 11, 1876.

"12. Bidders should first propose for service strictly according to the advertisement, and then, if they desire, separately for different service; and if the regular bid be the lowest offered for the advertised service, the other propositions may be considered.

"13. There should be but one route bid for in a proposal. Consolidated or combination bids ('proposing one sum for two or more routes') cannot be considered.

"14. The route, the service, the yearly pay, the name and residence of the bidder (that is, his usual post-office address), and the name of each member of a firm where a company offers, should be distinctly stated.

"15. Bidders are requested to use, as far as practicable, the printed proposals furnished by the Department, to write out in full the sum of their bids, and to retain copies of them.

"16. Bids altered in the route, the service, the yearly pay, the name of the bidder, or any material part of the bond, by erasures or interlineations, should not be submitted; and if so submitted will not be considered in awarding the contracts. No withdrawal of a bid will be allowed unless the withdrawal is received twenty-four hours previous to the time fixed for opening the proposals.

"17. In case of failure of the accepted bidder to execute a contract, or of the abandonment of service during the contract term, the service will be relet at the expense of the failing bidder or contractor, and any accepted bidder who shall wrongfully refuse or fail to enter into contract in
26 due form, and to perform the service described in his proposal, may be deemed guilty of a misdemeanor, and, on conviction thereof, be fined and imprisoned therefor.

"18. The Postmaster-General reserves the right to reject all bids on any route whenever in his judgment the interests of the service require it, and also to disregard the bids of failing contractors and bidders.

"19. No contract for carrying the mail shall be made with any person who has entered, or proposed to enter, into any combination to prevent the making of any bid for carrying the mail, or who has made any agreement, or given or performed, or promised to give or perform, any consideration whatever to induce any other person not to bid for any such contract.

"20. No bidder for carrying the mails shall be released from his obligation under his bid or proposal, notwithstanding an award made to a lower bidder, until a contract for the designated service shall have been duly executed by such lower bidder and his sureties, and accepted, and the service entered upon by the contractor to the satisfaction of the Postmaster-General.

"21. By regulation of the Department, no carrier can be employed who is under sixteen years of age; and no bidder will be accepted who is under twenty-one years of age, or who is a married woman.

"22. Every proposal must be accompanied by a bond with two or more sureties approved by a postmaster, and in cases where the amount of the bond exceeds five thousand dollars ($5,000) by a postmaster of the first, second, or third class. Bids for service, the pay for which at the time of advertisement exceeds five thousand dollars ($5,000), must be accompanied by a certified check or draft, payable to the order of the Postmaster-Gen-

eral, on some solvent national bank, of not less than five per centum on the amount of the annual pay on each route, and in case of new or modified service not less than five per centum of the amount of the bond accompanying the bid, if the amount of said bond exceeds ($5,000) five thousand dollars.

"23. The amount of bond required with bids, and the present pay when it exceeds ($5,000) five thousand dollars, are stated in the advertisement under the appropriate route.

"24. Sureties on the bond of a bidder must take an oath before an officer qualified to administer oaths that they are the owners of real estate worth, in the aggregate, a sum double the amount of said bond, over and above all debts due and owing by them, and all judgments, mortgages, and executions against them, after allowing all exemptions of every character whatever; and when the same persons are sureties on more than one bond such real estate must equal in value not less than one-fourth the aggregate of all the bonds on which they are sureties.

"A married woman will not be accepted as surety, either on the bond of a bidder or upon a contract.

"Accompanying the bond of a bidder, and as a part thereof, shall be a statement of the sureties, under oath, showing the amount of real estate owend by them, brief description thereof, and its probable value, where it is situated, in what county and State the record evidence of their title exists. Any surety who shall swear falsely to this required statement is deemed by the law guilty of perjury, and is punishable as is prescribed by law for that crime.

"25. All checks deposited with bids will be held until contract is executed and the service commenced by the accepted bidder. Checks will then be returned by mail, on the written request of the bidder, or delivered to any one on his order.

"26. The contracts are to be executed and filed in the Department by or before Sept. 10, 1878, otherwise the accepted bidder will be considered as having failed, and the Postmaster-General may proceed to contract for the service with other parties, according to law.

Sureties on contracts must be worth not less than one-fourth the amount of all the contracts on which they are sureties.

"27. Assignments of contracts, or of interest in contracts, are forbidden by law, and consequently cannot be allowed. Neither can bids, or interests in bids be transferred or assigned to other parties. Bidders will therefore take notice that they will be expected to perform the service awarded to them through the whole contract term.

"28. Section 249 of the act of June 8, 1872, provides that contracts for the transportation of the mail shall be 'awarded to the lowest bidder tendering sufficient guarantees for faithful performance, without other reference to the mode of such transportation than may be necessary to provide for the due celerity, certainty, and security thereof.' Under this law bids that propose to transport the mails with 'celerity, certainty, and security,' having been decided to be the only legal bids, are construed as providing for the entire mail, however large, and whatever may be the mode of conveyance necessary to secure its 'celerity, certainty, and security,' and have the preference over all others, and no others are considered, except for steamboat routes.

"29. On routes where steamboat service is required, the contractor will be required to furnish steamboats which are safe, suitable, and satisfactory to the Postmaster-General.

"As route agents will be placed on each boat who will take entire
27 charge of the mails and all mail matter, the contractor will be required to fit up, on each boat employed in the service, a room suitable for a post-office, with a sleeping apartment attached, for the exclusive use of the route agent, and to furnish first-class board to such agent without charge.

"30. A modification of a bid in any of its essential terms is tantamount to a new bid, and cannot be received so as to interfere with regular competition. Making a new bid in proper form is the only way to modify a previous one.

"31. Postmasters are cautioned, under penalty of removal, not to sign the approval of a bond of any bidder before the proposal is completed and the bond is signed by the bidder and his sureties, and not until entirely satisfied of the sufficiency of the sureties.

"They are also cautioned not to divulge to any one the amount of any proposal certified by them. Doing so will be sufficient cause for their removal.

"32. No postmaster, assistant postmaster, or clerk employed in any post-office shall be a contractor or concerned in a contract for carrying the mail.

"33. Postmasters are also liable to dismissal from office for acting as agents of contractors or bidders, with or without compensation, in any business, matter, or thing relating to the mail service. They are the trusted agents of the Department, and cannot consistently act in both capacities.

"34. In case the route is not fully supplied with pouches, locks, and keys, requisition must be made upon the Second Assistant Postmaster-General for the same before the date of beginning service."

II.

In response thereto claimant submitted the following bid:

"PROPOSAL.

"The undersigned, W. M. Griffith, whose post-office address is Yuma, county of Yuma, Ter. of Arizona, proposes to carry the mails of the United States from October 1, 1878, to June 30, 1882, on route No. 40116, between Phœnix and Prescott, Ter. of Arizona, under the advertisement of the Postmaster-General, dated May 10, 1878, 'with celerity, certainty, and security,' for the sum of six hundred and eighty dollars per annum; and if this proposal is accepted he will enter into contract, with sureties to be approved by the Postmaster-General, within the time prescribed in said advertisement.

"This proposal is made with full knowledge of the distance of the route, the weight of the mail to be carried, and all other particulars in reference to the route and service; and, also, after careful examination of the forms and instructions attached to said advertisement.

"Dated May 24th, 1878.

"WM. M. GRIFFITH,
"*Bidder.*

"[Oath required by section 245 of an act of Congress approved June 23, 1874, to be affixed to each bid for carrying the mail, and to be taken before an officer qualified to administer oaths.]

"I, W. M. Griffith, of Yuma, Arizona, bidder for carrying the mail on route No. 40116, from Phœnix to Prescott, do swear that I have the ability, pecuniarily, to fulfill my obligation as such bidder; that the bid is made in good faith, and with the intention to enter into contract and perform the service in case said bid shall be accepted.

"WM. M. GRIFFITH.

"Sworn to and subscribed before me, clerk U. S. dist. court for the second jud. dist. of Arizona, this 24th day of May, A. D. 1878, and in testimony thereof I hereunto subscribe my name and affix my official seal the day and year aforesaid.

"GEORGE TYNG, [L. S.]
"*Clerk U. S. District Court, 2d Jud. Dist. Arizona.*"

III.

The foregoing bid or proposal was accepted by the Postmaster-General, and the following contract was thereafter duly entered into:

"UNITED STATES OF AMERICA,
"*Yuma, Yuma Co., Ariz.:*

"No. 40116. $680 per annum.

"This article of contract, made the 31st day of July, eighteen hundred and seventy-eight, between the United States of America (acting in
28 this behalf by the Postmaster-General; and W. M. Griffith, contractor, and Jesus Redondo and Lyman A. Smith as his sureties."

Witnesseth, that whereas W. M. Griffith has accepted, according to law, as contractor for transporting the mail on route No. 40116, from Phœnix, Ariz., by Gillett (n. o.) and Agua Fria, to Prescott and back, once a week, by a schedule satisfactory to the Department, at six hundred and eighty dollars per year, for and during the term beginning Oct. first, eighteen hundred and seventy-eight, and ending June thirtieth, eighteen hundred and eighty-two: Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves—

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase during the term of this contract, and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to such altered schedule; and in all cases to carry said mail in preference to passengers and freight, and to their entire exclusion if its weight, bulk, or safety shall so require. And that they will carry the mail, upon demand, by any conveyance which said contractor regularly runs, or is concerned in running, on the route, beyond the number of trips above specified, in the same manner and subject to the same regulations as are herein provided touching regular trips.

2d. To carry the mail in a safe and secure manner, free from wet or injury, under a sufficient oil-cloth or bear-skin, if carried on a horse, and in a boot under the driver's seat, if carried in a coach or other vehicle.

3d. To take the mail and every part thereof from, and deliver it and every part thereof at each post-office on the route, or that may hereafter be established on the route (or on any route that may hereafter be established and to which this contract may be extended as hereinafter provided), and into the post-office at each end of the route, and into the post-office, if one is there kept, at the place at which the carrier stops for the night, and if no post-office is there kept to lock it up in some secure place, at the risk of the contractor.

They also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail, and his careful and faithful performance of the obligations assumed herein and those imposed by law, not to commit the care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required to do so by the Postmaster-General; not to transmit, by themselves or either of them, or either of their agents, or be concerned in transmitting commercial intelligence more rapidly than by mail; not to carry otherwise than in the mail letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail-locks and bags, and other postal supplies, and also the special agents of the Department on the exhibition of their credentials, if a coach or other suitable conveyance is used, without additional charge; to collect quarterly, if required by the Postmaster-General, of postmasters on the route, the balances due from them to the United States on their quarterly returns, and faithfully to render an account thereof to the Postmaster-General in the settlement of the quarterly accounts of said contractor, and to pay over to the Auditor of the Treasury for the Post-Office Department, on the order of the Postmaster-General, all balances remaining in his hands.

For which service, when performed, the said W. M. Griffith, contractor, is to be paid by the United States the sum of six hundred and eighty dollars a year, to wit: Quarterly, in the months of November, February, May, and August, through the postmasters on the route, or otherwise, at the option of the Postmaster-General; said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may discontinue or extend this contract, change the schedule and termini of the route, and alter, increase, decrease, or extend the service, in accordance with law, he allowing a pro rata increase of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary; and, in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with, and a pro rata compensation for the service retained: *Provided, however*, That, in case of increased expedi-

tion, the contractor may, upon timely notice, relinquish the contract.

29 It is hereby also stipulated and agreed by the said contractor and his sureties as aforesaid, that they shall forfeit—

1. The pay of a trip when it is not run, and, in addition, if no sufficient excuse for the failure is furnished, an amount not more than three times the pay of the trip.

2. At least one-fourth of the pay of a trip when the running is so far behind time as to fail to make connection with a depending mail.

3. For violating any of the foregoing provisions touching the transmission of commercial intelligence more rapidly than by mail; or giving preference to passengers or freight over the mail, or any portion thereof, or for leaving the same for their accommodation; or carrying, otherwise than in the mail, matter which should go by mail; or transporting passengers engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provision of this contract touching the carriage of the mails, or the time and manner thereof, without a satisfactory explanation of the delinquency in due time to the Postmaster-General, a penalty in his discretion. That these forfeitures may be increased into penalties of a higher amount, in the discretion of the Postmaster-General, according to the nature or frequency of the failure and the importance of the mail: Provided that, except as herein otherwise specified, and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

And it is hereby further stipulated and agreed by the said contractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier when required by the Department; for transmitting commercial intelligence or matter which should go by mail contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whenever, in the opinion of the Postmaster-General, the service cannot be safely continued, the revenue collected, or the laws maintained on the road or roads herein.

And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his sureties under this contract; but such damages may for the purpose of set-off or counter-claim, in the settlement of any claim of said contractor, or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-Office Department.

And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postmaster-General.

And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress approved June eighth, one thousand

eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department."

In witness whereof the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

D. M. KEY,
Postmaster-General.

Signed, sealed, and delivered by the Postmaster-General in the presence of—

J. N. DORRIS.

Signed this 12th day of August, 1878.
WM. M. GRIFFITH, [SEAL.]
Contractor.

Signed this 12th day of August, 1878.
JESUS REDONDO, [SEAL.]
Surety.

Signed this 12th day of August, 1878.
LYMAN A. SMITH, [SEAL.]
Surety.

And by the other parties hereto in the presence of—
FRANK B. WIGHTMAN,
GEO. H. BOWER,
Witnesses.

30 YUMA, YUMA CO., ARIZONA,
August 12, 1878.

I hereby certify that Jesus Redondo and Lyman A. Smith are good and sufficient sureties for the amount of the foregoing contract.

H. S. C. FITZGERALD,
Postmaster.

THE SCHEDULE OF DEPARTURES AND ARRIVALS.

Leave Phœnix Wednesday at 6 a. m.; arrive at Prescott in ninety-six hours; leave Prescott Wednesday at 6 a. m.; arrive at Phœnix in ninety-six hours.

Provided, that when more than seven minutes are taken for opening and closing the mail at any office, the surplus time so taken is to be allowed in addition to the time fixed in this schedule.

CERTIFICATE OF THE OATH OF MAIL CONTRACTORS AND CARRIERS.

[Required by act of Congress of June 8, 1872.]

I, Wm. M. Griffith, being "employed in the care, custody, and conveyance of the mail," as contractor on route No. 40116, from Phœnix to Prescott, Territory of Arizona, do swear that I will faithfully perform all

the duties required of me, abstain from everything forbidden by the laws in relation to the establishment of post-offices and post-roads within the United States; and that I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control. And I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic. So help me God.

WM. M. GRIFFITH,
Contractor.

COUNTY OF YUMA,
Territory of Arizona, ss:

Sworn before the subscriber, clerk of the district court for the county and State aforesaid, this 12th day of August, A. D. 1878; and I also certify that the person above named is above the age of twenty-one years, to the best of my knowledge and belief.

[SEAL.] GEORGE TYNG,
Clerk.

IV.

Prior to the commencement of service under said contract the claimant made out, swore to, and presented at the office of the Second Assistant Postmaster-General the following statements:

YUMA, ARIZONA, *Sept. 10th*, 1878.

Hon. THOS. J. BRADY,
Second Ass't P. M. Gen'l, Washington, D. C.:

SIR: If mail service upon route No. 40116, Phœnix to Prescott, Arizona, is ordered reduced in the running time, as contemplated by the people and officials now petioning, so as to run through in an expedited schedule of two (2) days instead of present advertised schedule of four days, I herewith submit statement of increased number of stock and carriers rendered necessary to shorten the running time upon said route. Stock and carriers necessary to carry mails upon present advertised schedule of (4) days, one trip per week, would be one carrier and one animal.

To increase the speed so as to transport mails thro' in 48 hours, or two days, would require eight animals and three carriers. The slow advertised schedule is not to exceed thirty miles per day. The expedited schedule will be about seventy miles per day. Which is respectfully submitted, to the best of my knowledge and belief.

W. M. GRIFFITH,
Contractor.

TERRITORY OF ARIZONA,
County of Yuma, ss:

Subscribed and sworn to by W. M. Griffith, contractor, before me this 10th day of September, A. D. 1878.

GEORGE TYNG,
Clerk U. S. Dist. Court, Second Jud. Dist. Arizona.

31

YUMA, ARIZONA, *Sept.* 10*th*, 1878.

Hon. THOS. J. BRADY,
Second Asst. P. M. Gen'l, Washington, D. C.:

SIR: If mail service upon route No. 40116, Phœnix to Prescott, Arizona, is ordered reduced in the running time as contemplated by all the citizens and officials now petitioning, so as to run thru' on an expedited schedule of 2½ days instead of present advertised schedule of 4 days, I herewith transmit statement of increased number of stock and carriers rendered necessary to shorten the running time upon said route.

Stock and carriers necessary to carry mails upon present advertised schedule of four days, one trip per week, would be one carrier and two (2) animals.

To increase the speed so as to transport mails through in two and a half days would require seven animals and three carriers. The slow advertised schedule is not to exceed 34 miles per day. The expedited schedule will be about 60 miles. Which is respectfully submitted to the best of my knowledge and belief.

W. M. GRIFFITH,
Contractor.

TERRITORY OF ARIZONA,
County of Yuma, ss:

Subscribed and sworn to by W. M. Griffith, contractor, before me this tenth day of September, A. D. 1878.

GEO. TYNG,
Clerk U. S. Dis. Court, Second Jud. Dist. Arizona.

V.

November 29, 1878, the claimant submitted the following proposal:

WASHINGTON, D. C., *Nov.* 29, 1878.

Hon. SECOND ASS'T P. M. GEN'L:

SIR: I propose to perform tri-weekly service upon route No. 40116, Phœnix to Prescott, upon an expedited schedule of one-half the running time as advertised, for the total annual pay of eighty-eight hundred and fifty dollars. This route being the shortest and most direct route to the capital of Arizona, it will in time be the route upon which the entire mail will have to be transported; therefore the price above named for this service is a low price.

W. M. GRIFFITH,
Contractor.

Do this.

BRADY.

Thereupon the Department made the following order, dated December 2, 1878:

"Increase service two trips a week and reduce schedule time from 96 hours to 48 hours, from December 16, 1878, and allow contractor $8,170 per annum additional pay, being less than pro rata, but in accordance with his written agreement."

VI.

After said order was made claimant carried the mail as therein directed over said route up to June 11, 1879, when the Department issued the following order, No. 5270, dated June 11, 1879:

"(1) Increase service four (4) trips per week and allow contractor $11,800 per annum additional pay, being pro rata from June 16, 1879.

"(2) Reduce running time from forty-eight hours to thirty-two hours and allow contractor $11,900.32 per annum additional pay, being pro rata from June 16, 1879."

The following orders were subsequently issued by the Department:

"No. 3435, April 17, 1880. From May 1, 1880, reduce service one trip per week, decreasing contractor's pay $4,662.90 per annum, being pro rata, and allow one month's extra pay on the service dispensed with.

"No. 9454, August 16, 1880. From September 1, 1880, reduce service to three times a week and deduct from contractor's pay $13,988.71 per annum, being pro rata; allow contractor one month's extra pay on service dispensed with."

32 "No. 9980, August 31, 1880. (1) Rescind order bearing date August 16, 1880 (No. 9454). (2) From September 1, 1880, increase the service one trip per week and allow contractor $4,662.90 per annum additional pay, being pro rata.

"No. 816, January 20, 1882. Suspend pay of contractor."

VII.

Claimant performed service on said route well and satisfactorily; he has not been paid the compensation for the three quarters beginning October 1, 1881, and ending June 30, 1882, which, at the rate of $8,160.08 per quarter, amounts to $24,480.24. This sum was demanded of defendants before this action was begun.

The price fixed in the orders was reasonable for the service performed and as compared with the pay for similar service on similar routes, and was not an excessive price for carrying said mail.

The amount actually paid for service on said route No. 40116 from October 1, 1878, to September 30, 1881, was $78,192.87.

VIII.

Service on this route never was performed strictly in accordance with the letter of this contract; in fact, such performance was manifestly impossible if one horse or mule and one carrier only were employed. By agreement made by the contractor with the terminal postmasters, forwarded in due course to Washington and not disapproved, claimant performed, without complaint by defendants, the weekly service by forwarding the mail from Phœnix upon one day and forwarding it from Prescott three and a half days later. Such changes so made were customary. This service was first for a short time performed by a mounted carrier and later by a driver, two horses or mules, and a buckboard. The mails were very light at first, but increased greatly in bulk during the period covered by the contract, owing to the building of the Southern Pacific road.

The ordinary and usual means for carrying such a mail over such a route as that contemplated by the contract was transportation by man and horse, either under saddle or attached to a light vehicle; if the mail had been started from each terminus of the route on the same day and hour, as provided by the contract, it would have been practicable to convey it both ways by means of two men and two horses in three days of each week; by starting the mail on different days, as it was in fact carried, it was practicable to transport it the round trip by means of one man and one horse in six days of each week; in both of the foregoing cases the transportation of the mail over that route, at the rate of 33 miles per day per horse, while practicable, would have been severe work for the horses employed; the transportation of the mail by means of one man and two horses in six days, or its equivalent of two men and four horses in three days, that is to say, at the rate of 25 miles per day per horse, would have been ordinary work for the horses employed.

Claimant also carried freight and passengers during the term of the contract.

IX.

The number of stock and carriers estimated to be necessary in transporting the mail over said route; in making the increase of pay
33 for increased service and expedited time, was actually used during the period covered by the estimate and increase.

X.

The Post-Office Department has an inspector's division, charged with vigilant observation of the manner of carrying mails over all star routes, and with the duty of gathering complete information for the Department concerning the transportation of the mail during the period of the contract. Inspectors passed over said route 40116 frequently during the last two years of the contract, and no objection was made, until the order of suspension, recited hereinbefore, by the defendant to the claimant, that there was any impropriety in his action, or that he was not properly fulfilling his obligations.

XI.

On and prior to December 2, 1878, no rule of the Post-Office Department required a contractor to give an opinion, statement, or affidavit of stock or carriers necessary to transport the mail under existing circumstances or which would be necessary under a contemplated increase of service or expedition of time.

But at the time the contract in question was made and during its life the regulations set forth in Finding I were in force.

XII.

There never was a schedule over the route 40116 of forty-eight hours once a week.

XIII.

The depreciation of capital and property involved in the carrying of the mail on this route during the contract term was 65 per cent. of the value of said property.

XIV.

Defendants had the means of knowing, through the officers and machinery of the Post-Office Department, at the time of the several increases and expeditions, the number of stock and carriers necessary to be used in carrying out the Department's orders.

XV.

At the time of commencement of service on route 40116 the existing mail could have been carried on horseback between Prescott and Phœnix at average speed, something less than 4 miles an hour; the distance between the two points is about 100 miles.

The statement of September 10, 1878, set out in Finding IV, and the proposal of November 29, 1878, set out in Finding V, were placed in a "jacket" by one of the clerks in charge of this class of business
34 in the Post-Office Department, and the indorsement hereinafter set forth was made thereon, and was laid before the Second Assistant Postmaster-General, and was signed by him. The following is the indorsement:

"Date, November 30, 1878; Territory, Arizona; No. of route, 40116; termini of route, Phœnix and Prescott; length of route, 140 miles; number of trips per week, one; contractor, W. H. Griffith; pay, $680 per annum.

"Petition inclosed, signed by citizens of Phœnix, Maricopa County, Arizona Territory, asking for an expedition of schedule on this route.

"Hon. H. S. Stevens states that the advertised schedule is unprecedented in length, and recommends that the running time be reduced from 96 hours to 48 hours. There is one intermediate office depending on this route for supply, the terminal offices having three times a week communication via Wickenburgh.

"Contractor submits a sworn statement in regard additional number of men and horses required to reduce running time from 96 hours to 48 hours.

"Annual cost of two additional weekly trips and expedition, $9,180.

"Citizens living on and near this route petition for expedition of schedule and increase of service to daily; contractor submits a proposition to reduce running time and increase service two trips per week at $8,850 per annum, being less than pro rata.

"Increase service two trips per week, and reduce schedule time from 96 hours to 48 hours, from December 16, 1878, and allow contractor $8,170 per annum additional pay, being less than pro rata, but in accordance with his written agreement.

"BRADY.

"Order No. 10520; date, Dec. 2, 1878; day-book page, 34; wrote P. M. and contractor, Dec. 2, 1878."

CONCLUSION OF LAW.

Upon the foregoing facts the court find, as conclusions of law,

First. That the counter-claim be dismissed.

Second. That judgment be entered in favor of claimant for the sum of $24,480.24.

XI.—*Opinion.*

DAVIS, J., delivered the opinion of the court:

The claimant contracted to carry the mail once a week between Phœnix, Arizona, and Prescott, the capital of the Territory, upon a schedule which required him to leave each end of the route upon the same day, arriving at the other end in 96 hours. The distance being not far from 100 miles, this required an average speed of a little over 1 mile per hour. The mail was, however, never in fact carried in this way; on the contrary, claimant agreed with the postmasters at the termini to start from each end of the route on days so far apart that one horse and carrier could perform the service which otherwise would have required the service of two horses and two carriers. This kind of agreement made by postmasters, described in the regulations as "trusted agents" of the Government, is customary, necessarily so when the shifting methods of communication in a new, vast, and growing country are considered. Changes in the running time of trains, changes in the lines of road, changes in business methods, and the extension of railroads, which entirely alter the mail requirements of a district, are matters peculiarly within the knowledge of the local postmasters, and to the discretion of these "trusted agents" much must be committed, subject, of course, to the supervision of the Department in Washington. Claimant's agreement with the postmasters was in due course sent to Washington, was not disapproved, and was acted upon presumably with the knowledge of the Department, whose agents (the postmasters) were, in accordance with regulations, reporting regularly as to the contractor's work, and whose other agents, the inspectors, were presumably
35 attending to the duties imposed upon them of carefully watching over the Government's interest in regard to this as well as all other star routes.

The claimant therefore began the performance of his contract not by leaving Phœnix and Prescott upon the same day, but by sending a man on horseback from Phœnix to Prescott, who in due course returned over the route; all within the schedule time. The Government therefore had a ninety-six-hour trip once a week each way, but the days of departure were by the postmaster's consent and without objection or complaint on the part of the Department changed from those specified in the schedule annexed to the contract.

Every Government officer is presumed to know his duty and to honestly perform it. The Government, like any other employer, is responsible for the acts of its agents within the limits of the power given them, and it is as much bound as a private citizen to employ honest and competent men. There is nothing to show that the individual officers who were concerned in the case now at bar did not so act in regard to it; nor do we understand that counsel for defendants so allege, although certain intimations have from time to time escaped in the argument tending to show a suspicion by the Government of its own agents.

In the case at bar we practically have to consider only questions of law, for whether the money paid the claimant was legally paid him or not, whether he has a right to recover the balance he alleges to be due him or not, depends principally upon a construction of the statutes and of the Department's regulations and power. The amount he received and that which he claimed to be still due is a reasonable and just sum for service actually performed, a sum which, if he could recover at all upon a quantum meruit, he would be entitled to receive. There is, however, one question sounding somewhat in fraud or deceit which we shall first consider.

Turning to the history of the case we find the claimant under contract to carry the mail over the Phœnix-Prescott route once a week, at the rate of 100 or so miles in 96 hours, leaving each terminus the same day, the last condition being changed by agreement, not disapproved by the Department, so that with one horse and carrier it was physically possible to make the round trip on the 96-hour schedule.

The bid for this contract was made in May, 1878; the contract was made in August, 1878, and was to run from October 1, 1878, to June 30, 1882.

In September, 1878, some twenty days before any duty under the contract fell upon the claimant, he sent two statements in writing to the Post-Office Department, both made upon the same day and both verified under oath. Upon these statements the defendants' case largely turns, for they claim that the statements were untrue in fact and that they were intended to mislead and did mislead the Department, which had a right to trust in them.

In one of these documents claimant said in substance that if the service on the route were to be reduced in running time, i. e., "expedited," as contemplated by the people and officials then petitioning, so as to run through in two days instead of four days (ninety-six hours), he would need to use eight horses and three carriers, while on the existing schedule of ninety-six hours, stock and carriers necessary would be one carrier and one animal.

36 Claimant's other statement, made the same day, and which it may be assumed was before the Department, with the one already described, contemplated a reduction of running time from four days to two and one-half days. As to that claimant said:

"Stock and carriers necessary to carry mail upon present advertised schedule of four days, one trip per week, would be one carrier and two animals. To increase the speed so as to transport mails through in two and a half days, would require seven animals and three carriers."

Two points will immediately strike any one who reads these statements: First, the advertised schedule required claimant to leave both ends of the route on the same day; this he could not do with one carrier and one animal or with one carrier and two animals. Second, he says in one instance that under the then existing schedule he required one carrier and one animal, and in the other that he required one carrier and two animals.

These two statements made on the same day, and containing these two discrepancies patent on their face, discrepancies which could not escape the eye of any one, and must have been immediately seen by a trained and experienced Government official, cannot be held as intended to deceive, or as in fact deceiving or misleading the defendants' agents. They are ap-

parently the result of the agreement with the terminal postmasters, and of carelessness, or of incorrect judgment. It should further be remembered that claimant had not yet begun work under his August contract, so that he is not stating an existing fact, but his estimate of what he will need to fulfill the duties imposed by it upon him, as well as his estimate of what he will need should an expedition be ordered. Both statements are in effect mere expressions of opinion; they are on their face estimates, not statements of fact.

Whatever the claimant knew about this route the Department knew; the system there in force for the collection and arrangement of information as to these routes is confessedly a very thorough and perfect one, and with the aid of the local postmasters and the officers of the inspection division the Department was in a position to exactly investigate the state of affairs in Arizona with the needs and expense of the service there.

Nothing more appears to have been done in the matter until November 29, 1878, that is, nearly three months after the September statements (upon which up to that time no action seems to have been taken), when the claimant offered to perform tri-weekly service on the route upon an expedited schedule of one-half the running time as advertised, that is, one-half of ninety-six hours, for the total annual payment of $8,850, stating at the same time, what subsequent events proved to be true, that the route being the shortest and most direct to the capital of Arizona it would in time become the route upon which the entire mail would be transported. Three days thereafter the Department ordered the service increased to two trips per week, ordered it expedited from ninety-six hours to forty-eight hours, that is, ordered the speed doubled, and ordered the contractor to be allowed $8,170 per annum additional compensation, "being less than pro rata, but in accordance with his written agreement." This was done. In June, 1879, the trips were increased to four per week, running time was reduced to thirty-two hours, and for this service proportionate additional pay was allowed and paid until January, 1882.

37 The defendants' counsel has set up and urged with great zeal and ability a counter claim, upon the theory of which they not only deny claimant's right to a judgment, but also claim to recover for amounts already paid him under alleged fraud or mistake in that the allowances made were founded upon a false state of facts and the Department was misled by the claimant.

The statutes relating to increased or expedited service are found in sections 3960 and 3961 of the Revised Statutes. They provide, first, as to additional service, that compensation shall not be in excess of the exact proportion which the original compensation bears to the original service (section 3960). This is a very simple provision, and a result can be reached in regard to any case arising under it by the application of the rule of three—one trip so much, two trips not more than twice as much.

As to expedition or increase of speed there is more difficulty. The statute (section 3961) provides that no extra allowance shall be made on this account unless by such expedition increase of stock and carriers is made necessary, and then the additional compensation "shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution." This statute may for illustra-

tion be resolved into a very simple algebraical problem: a being the present number of stock and carriers necessary, b being the present compensation, c being the necessary increase of stock and carriers, and x being the statutory increase of payment, we construct this proportion: $a : b :: c : x$. Putting this into figures, again for illustration, and calling the present number of stock and carriers (a) 10, the present compensation (b) $5,000, and the increase of stock and carriers necessary for expedition (c) 5, we reach the following result: 10 : $5,000 : : 5 : ($x$) $2,500. That is, the contractor should receive, in this hypothetical case of an increase of one-half in his force, one-half more pay; and if his service is at the same time doubled in number of trips, then he is entitled to multiply this gross result by two. Thus in this instance he would receive for one expedited trip $7,500, and for two such trips $15,000, whereas on the single slow-time trip he received but $5,000. Reduce the time again one-half, and then again double the trips (all on the same theory of fact), and there is a very important increase, fully authorized by law, provided the additional stock and carriers are in fact made necessary.

The importance of the illustration is in this: Suppose the third term of the proportion, the multiplier, be overstated, or suppose the first term, the divisor, be understated, or, finally, suppose that both facts concur, the third term is overstated and the first term understated, then in either instance an incorrect conclusion is reached and the Government pays more than the statute authorizes. Three illustrations from the preceding hypothetical case will show the effect of this: 10 : $5,000 : : 20 : $10,000; here the increase of stock and carriers, the third term, is exaggerated; or, 5 : $5,000 : : 10 : $10,000; here the present amount of carriers and stock is understated; or, 5 : $5,000 : : 20 : $20,000; here both errors are present, and the Government pays $20,000 for service worth only $2,500. The room for fraud is great; by cutting off a carrier from present service, or by adding a carrier to the estimate for contemplated service, a result is obtained entirely out of proportion to the apparent extent of the deceit, mistake, or fraud. It is popularly supposed that much money has
38 been dishonestly taken from the Treasury through this or similar methods. Defendants endeavor to show that this was such a case, and for that purpose they principally rely upon the two affidavits of September 10, 1878, claiming that the contractor could not have performed the service called for in his agreement with one horse and carrier or with two horses and one carrier, as then he could not send the mail from each end of the route upon the same day at the same time. Of course he could not, and that fact being patent would not have escaped the notice of the Department authorities and could not have misled or deceived them. A self-evident absurdity can deceive no one, and we know of no principle of law which allows such an allegation to form the basis of an action for fraud or deceit.

The agreement with the terminal postmasters, presumably approved by the Department, also lends light to the position of the Government and the claimant at the time.

Further, the claimant did not state what stock and carriers he was in fact using, for his communication was made twenty days before his contract began to run, which the Postmaster-General knew; but he stated what would be necessary to use, and one horse and carrier, as the findings show,

would be sufficient to make the round trip of 200 miles in a week, carrying nothing but a light mail.

It further appears that nothing was done by the Department at the time these affidavits or statements were made; no order was then issued, nor any schedule contemplated in the statements was adopted, and matters remained in statu quo until the end of the following November, when an entirely separate and distinct proposal was made by the claimant to do a different service for a sum stated. December 2, 1878, claimant was ordered to proceed upon the terms of his proposal.

We cannot agree that the September affidavits influenced the Postmaster-General's action, for we see no connection between them and the proposal of November 29; and we cannot agree that they were false in fact. The theory, therefore, that by claimant's deceit he led the Post-Office Department into the error of supposing less carriers necessary for the then existing mail service than were in fact necessary; that, rightfully relying upon this, they reduced the first term of the proportion for increase, and that so, having started in error, all subsequent additions to compensation were based upon the same mathematical mistake, and were therefore too great, we cannot concur in. The Government's position on this branch of the case turns upon this proposition as stated in their brief when speaking of the proposal of November 29:

"It was, of course, wholly outside the powers of any officer to accept such a proposition as this after the contract had once been let according to law, unless the terms of it fell within the limitations governing allowances of extra pay as contained in the sections of the Revised Statutes. * * * But assuming to believe the one horse and one man affidavit, and that an increase of 450 per cent. in stock and carriers would be rendered necessary by the change, the vigilant official then guarding the public interests in star-route matters made the order of December 2."

There is nothing to show that the Government officers did not act honestly; there is nothing connecting the September statements as to a two day or two and one-half day weekly schedule with the November proposal and the December order for two forty-eight hour trips weekly.

The Department had other sources of information much more to be depended upon than the ex parte opinion of any contractor—sources
39 of information provided by law, which it was bound to consult and presumably did consult. Finally, as one horse and carrier could, in fact, perform the service under the schedule as changed, there was nothing false in the statement, which, at most, was a careful expression of opinion under oath, made prior to actual performance under the contract.

It further appears that the mail service was always properly and satisfactorily performed, and that the price paid was a fair and reasonable one under all the circumstances. The defendants, therefore, are thrown back upon questions of law relating to the power of the Department to make the increase in compensation which was made.

The proposal of November, 1878, for expedited and increased service, with the order made thereon, did not constitute a new contract, but made simply an alteration of the existing contract in a manner provided by its terms and authorized by statute. No new contract for mail letting on star routes could be made by the Department except after advertisement, and the phraseology of the proposal and the indorsement on it show an

intention to alter an existing service, not to contract for a new one. Existing service was to be increased and was to be expedited, and in doing this the Department, in accepting claimant's bid on the ground that it was less than pro rata, impliedly recognized the fact that the transaction was one covered and limited by the provisions of sections 3960 and 3961 of the Revised Statutes.

Garfielde's Case (93 U. S., p. 242) is not authority for holding an agreement such as this a new contract, for in that case the proposal was an original one for the service, made after advertisement in the manner prescribed by law, and the court held that the Department's acceptance of the proposal created a contract. In that case there was no existing contract relations between the parties, and no question of expedition or increase, whereas in the case at bar Griffith was bound to increase or expedite the service he was performing when ordered to do this on certain fixed terms, and these terms could not be altered by the Department, for they were prescribed by law, and if not satisfactory to Griffith, he was without remedy other than a surrender of his contract.

It is urged that the Postmaster-General having acted in this matter, and no fraud or mistake being shown, this court is without power to review his decision, and cannot substitute its judgment for the judgment of the Postmaster-General.

The general principles governing the question of judicial review of the action of an executive officer in exercising a discretionary power vested in him by law have been thus stated by the Supreme Court:

"Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts. (Martin v. Mott, 12 Wheaton, 419.)

The fraud for which a court of equity will intervene to grant relief by setting aside a judgment or decree between the same parties rendered by a court of competent jurisdiction is one extrinsic or collateral to the matter tried, and not a fraud which was in issue in the former suit. Such relief has been granted in cases wherever by fraud or deception practiced on the unsuccessful party, he has been prevented from exhibiting fully his case, by reason of which there has never been a real contest before
40 the court of the subject-matter of the suit. (United States v. Throckmorton, 98 U. S. p. 61.) In the case last referred to it was sought, by a bill in chancery, to set aside a patent for certain lands in California claimed under a Mexican grant. The patent had been issued by a board of commissioners appointed for that purpose under treaty provisions, and the allegation of the bill was that the claimant had procured a decision in his favor by forgery and by perjured testimony, and by this fraud "the law agent of the United States was misled, the United States [the orator] deprived of all opportunity to contest the confirmation, and the Land Commissioner and court were deceived into confirmation of the claim."

The opinion below was delivered by Mr. Justice Field, who said (Throckmorton v. The United States, 4 Sawyer, 42):

"Here * * * we have a special tribunal, established for the express purpose of ascertaining and passing upon land derived from Spanish or Mexican authorities, clothed with ample power to investigate the sub-

ject and determine the validity of every claim and the [illegible] recognition by the Government, capable as any court could be of detecting the fraud connected with the claim, and whose inquiry in each case was necessarily as to the authenticity and genuineness of the instruments upon which the claim was founded. * * * [illegible] adjudications cannot be reviewed or defeated by a court of equity upon any suggestion that the commissioners and court misapprehended the law or were mistaken as to the evidence before them, even if that evidence was fabricated papers, supported by perjured testimony. The very questions presented by the present bill were necessarily involved in the proceedings before the commissioners of the district court, and the credibility of the testimony offered was a matter considered by them. * * * The bill avers that the alleged grant was not genuine because it was antedated. But the genuineness of the document was the matter sub judice, and could not have been established and the claim based upon it affirmed except by evidence to the commission and court that it was made at the time stated."

The learned justice then, alluding to the doctrine that fraud vitiates all transactions, even the most solemn, says that this doctrine "cannot be be invoked to reopen a case in which the same matter has been once tried, or to put in issue between the parties that it might have been tried. The judgment rendered in such a case is itself the highest evidence that the alleged fraud did not exist, and estops the parties from asserting the contrary. It is afterward mere assumption to say that the fraud was perpetrated. The judgment has settled the matter otherwise; it is res judicata. The frauds for which a court of equity will interfere to set aside or stay the enforcement of a judgment of a court having jurisdiction of the subject-matter and the parties must consist of extrinsic collateral acts not involved in the consideration of the merits. They must be acts by which the successful party had prevented his adversary from presenting the merits of his case, or by which the jurisdiction of the court has been imposed upon."

Now as to the powers and duties of the Postmaster-General, we find that he is to furnish to postmasters schedules of the time of arrival and departure of the mail at their several offices, to notify them of any changes therein, and to cause to be kept and returned to the Department, at short and regular intervals, registers showing the exact time of the arrival and departure of the mail (Rev. Stat., § 3841); a division of inspectors is to examine these registers, also the certificates of route agents, and reports of mail failures, to note contractors' delinquencies, to prepare cases thereon for the action of the Postmaster-General, and to perform other duties necessary to secure a faithful and exact performance of all mail contracts and service (Regulations 1873. p. 148). The Postmaster-General is authorized to make deductions not exceeding a maximum fixed from the pay of contractors for failure to perform service according to contract, and to impose fines for other delinquencies (Rev. Stat., § 3962).

The Postmaster-General has power to establish post-offices at such
41 places on post-roads established by law as may deem expedient (§ 3829); he prescribes the penalties on postmasters' bonds (§ 3834); he may appoint postmasters of a certain class (§ 3836); he may temporarily fix the salary of *an* offices (§ 3853), and shall readjust the

salaries of postmasters (§ 3854); he may designate distributing or separating officers (§ 3859); he may discontinue a post-office (§ 3864); he fixes the salary of letter-carriers (§ 3866), and prescribes their uniform (§ 3867); he may establish branch offices (§ 3871); he may, upon evidence "satisfactory to himself," return certain registered letters as "fraudulent" (§ 3929); he may discontinue a post-road when "in [his] opinion it cannot be safely continued" (§ 3974). In case of contractor's delinquencies the Postmaster-General judges of the sufficiency of the contractor's excuse and fixes the amount of the fine (Regulations, secs. 279 to 284).

It is shown by these citations that the law-making power intended to give to the Postmaster-General great power of discretion in the management of the mails and post-roads, and committed much to his opinion and good judgment. Such a policy is necessary, for no such service can be strictly mapped out and defined by statute, and its changing needs require the attention of an executive officer vested with power of management. Bearing in mind this general policy, we turn to the statutes now in question.

Section 3960, dealing with increase of service, limits the maximum of allowance to the exact proportion which the original compensation bears to the original service. Section 3961, dealing with expedition, limits the extra allowance therefor, first, to cases wherein the employment of additional stock and carriers is made necessary by the expedition, and then provides that the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

The Postmaster-General decides, first, whether expedition is necessary; and if this be settled in the affirmative, then, second, whether thereby additional stock and carriers are rendered necessary; and if they are, third, the number of stock and carriers now necessarily employed in the existing service; and, fourth, the number of stock and carriers necessarily to be employed in the expedited service. It will be noticed that any decision on these questions involves largely mere estimates or opinions. The stock and carriers actually employed may not be the number necessarily employed in mail service; a portion perhaps being used for freight, passenger, or express business, while a determination of the number to be employed in the future is purely a question of estimate, calling for the good judgment of an expert.

The power of ascertaining these facts and making these estimates is exclusively vested in the Postmaster-General. The decision is the result of his judgment and discretion. From it there is no appeal to this court, and no fraud has been shown authorizing an interference by us on that ground. (Butterworth *v.* Hoe, 112 U. S., p. 64.)

To authorize relief on the ground of mistake, the mistake must have arisen from ignorance, imposition, or misplaced confidence. An act done intentionally and with knowledge cannot be treated as a mistake. (1 Story, Equity Juris., 110–140.)

The Postmaster-General had to aid him in the decision of this case the vast and complete machinery of his Department, and must have
42 had all the information as to this route which it was possible for any one, including this contractor, to obtain. The local postmas-

ters were reporting to him regularly, while the officers of the [illegible] division were watching this route as they did all other star routes, [illegible] fulfillment of the duties placed upon them by the regulations, [illegible] ing the Department informed as to the business being done and the manner in which it was done. To establish ignorance on the part of the Department of the facts in this case, the defendants must assume that the governmental agents were absolutely derelict in duty—an assumption which is not to be entertained; nor would it lead to a decision in defendants' favor, for a mistake, to be available in equity, must not have arisen from negligence where the means of knowledge were easily accessible. Further, the Government has long assented to the mistake, if mistake were committed; and having been so long silent, having assented to the performance of the contract in the manner in which it has been performed, it is now too late to tear it open. The Government knew what was being done by Griffith; the findings show that his route was constantly inspected; and knowing this, they allowed him to go on. The Supreme Court has announced as law that, where a party desires to rescind upon the ground of mistake or fraud, he must, upon the discovery of the facts, at once announce his purpose and adhere to it. If he be silent, he will be held to have waived the objection, and will be as conclusively bound by the contract as if the mistake or fraud had not occurred. (Grymes v. Sanders, 93 U. S., p. 55.)

The facts in this case do not require us to decide how far this doctrine is applicable to the Government in contracts for mail service.

The defendants, however, contend, under section 4057, Revised Statutes, that they are taken out of the general principles of equity and placed in a much more advantageous position. That statute authorizes the Postmaster-General to bring suit to recover money paid out of the funds of the Post-Office Department under either of the following circumstances: (*a*) Under the pretense that service has been performed when in fact it has not been performed; (*b*) for increased service actually rendered when the additional allowance exceeds the sum which according to law might rightfully have been allowed therefor; (*c*) all other cases where money has been paid to any person in consequence of fraudulent representations, or by the mistake, collusion, or misconduct of any officer or other employé of the Department. We do not find on the facts of this case that it is one embraced by this statute. The additional allowance was not in excess of the maximum permitted; there is no fraud shown on the part either of the contractor or a post-office employé; nor do we find that there was mistake in fact.

The action of the Postmaster-General was in its nature one of opinion of estimate deduced from all the information which his Department could procure. Whatever representations were made to him by the contractor were of the same nature. The number of horses and men necessary in the future to carry a mail over a given route where passengers and freight are carried by the same conveyance can be but an estimate, which may or may not stand the test of experience. It is apparent from the subject-matter of this case that whatever was stated must have been understood by the party to whom it was addressed as an expression of strong
43 belief only, because it is a subject-matter of which knowledge in the strict sense cannot be had. (Page v. Bent, 43 Mass., 374.)

"From the nature of the subject in relation to which the certificate was given the estimate of value was nothing more than a conjectural opinion, which, whether true or false, constituted no legal cause of complaint." (Gordon *v.* Butler, 105 U. S., p. 558.)

We therefore conclude, from this examination of the facts and authorities: The Postmaster-General's action was so far final that it can be impeached only for fraud or mistake; that no fraud or mistake is shown in the case; and even if a mistake were committed, it was, under the circumstances, one merely of opinion or estimate, and was not of a character, especially after it had been so long assented to, to authorize a recovery.

It is a question, not necessary to decide in this case, whether the Postmaster-General, in estimating the pro rata increase for expedition, may reduce the highest figures stated by the contractor as necessary for present service. No one has better means than the contractor for knowing what force he is employing on an existing contract, and it may be doubted whether the Postmaster-General could adopt any hypothesis more favorable to the contractor than is contained in his own statement, or when there are two statements, then than that contained in the statement whose terms are least favorable to the interests of the contractor. The action of the Postmaster-General within a reasonable time after the receipt of contractor's statements or affidavits might be an indication that he acted under "mistake" in accepting of two statements the one most favorable to the contractor, and in disregarding the one most favorable to the Government, whose agent he is. In this case, however, it does not affirmatively appear that the Postmaster-General acted on the affidavits, and circumstances indicate that he did not. About three months elapsed before he acted at all. The affidavits were made when the primary contract had not gone into operation, consequently their statements were necessarily conjectural. During the interval the contract did go into operation, and after conjecture had given place to experience the contractor made a new proposition, upon which the Postmaster-General did act. Too many uncertainties attend the transaction to warrant a court in concluding that a mistake occurred or that an error was involved in the expedited contract.

Counter-claim dismissed.

Judgment for claimant in the sum of $24,480.24.

44 XII.—*Final judgment.*

At a Court of Claims held in the city of Washington, D. C., on the 4th day of April, A. D. 1887, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises both for and against the Government and the claimant, do order adjudge, and decree that the counter-claim of the defendants be dismissed and that the said William M. Griffith do have and recover of and from the United States the sum of twenty-four thousand four hundred and eighty $\frac{24}{100}$ dollars ($24,480.24.)

45 XIII.—*Application of defendants for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 4th day of April, 1887, in favor of claimant, the defendants, by their Attor-

ney-General, on the 23d day of May, 1887, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Assistant Attorney-General.

Filed and allowed May 23, 1887.

46 XIV.

In the Court of Claims.

WILLIAM M. GRIFFITH
vs.
The UNITED STATES. } No. 14484.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of opinion of the court, of the final judgment, of the application of defendants for the allowance of an appeal to the Supreme Court of the United States and allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this twenty-fourth day of August, A. D. 1887.

[SEAL.]

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.